IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13078 of 2004

Between:

1 Smt. Sarojini Bai, W/o Kishtaiah,
2 D. Ramulu, S/o D. Yellaiah,
3 J. Ramaiah, S/o Bhoomaiah,
4 E. Ramesh Babu, s/o Nagabhushanama,
5 S. Rajaiah, S/o Rajaiah,
6 Smt. D. Umarani, W/o Late D. Ramesh,
7 B. Swamy, S/o B. Ramaiah,
8 Smt. Laxminarsamma, w/o D. Narayana,
9 Smt. Laxmi Bai, W/o Satyanarayana,
10 L. Narsimha, S/o Late Narsimha,
11 Smt. Pentamma, W/o Narsimha,
12 B. Jagannatham, s/o B. Sataiah,
(All are R/o H.No. 1-4-229 to 243/1, Kalasiguda, Secunderabad).

.....PETITIONERS

AND

1 The Municipal Corporation of Hyderabad, rep. by its Commissioner, Hyderabad.
2 The City Planner, Town Planning Section, Municipal Corporation of Hyderabad, Secunderabad Division, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate Writ and quash the order in M.A.No. 61 of 2002 dated 24-3-2004, on the file of the Chief Judge, City Small Causes Court, Hyderabad, and issue a direction declaring that the action of the respondents contained in proceedings No. 3034/TPS/W1/SD/MCH/2001 dated 19-6-2002, directing eviction of the premises bearing Nos.1-4-229 to 243/1 of Kalasiguda, Secunderabad and demolishing of the same as arbitrary and violative of principles of natural justice and direct the respondents not to evict the petitioners tenants from the said premises and further direct the respondents not to demolish the said premises.

Counsel for the Petitioners: MR.V.VENKATARAMANA

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court made the following :

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13078 of 2004

ORDER:

The Municipal Corporation of Hyderabad (MCH), first respondent herein initiated action under Section 456 read with Section 459 of Hyderabad Municipal Corporation Act, 1955 (for short, the Act), for demolition of premises bearing No.1-4-229 to 243/1 of Kalasiguda, Secunderabad division. Aggrieved by the same, petitioners, who are twelve in number and who are tenants of these premises initiated legal proceedings. This is second round of litigation.

The MCH issued a notice dt.15.12.2001 purporting to be under Section 456 of the Act requiring the petitioners to vacate and remove the dilapidated houses bearing Municipal Nos.1-4-229 to 243/1. Aggrieved by the same, the petitioners filed a writ petition seeking a declaration that the notice dated 15.12.2001 is illegal, arbitrary and contrary to the provisions of Section 459 of the Act. The writ petition being W.P.No.26450 of 2001 was disposed of by learned single Judge by order dated 26.12.2001, the same has become final. It would be necessary to extract the entire order.

The present writ petition has been filed seeking a declaration of the action of the respondents in issuing Notices bearing No.3034/TPS/W1/SD/MCH/2001, 452, 453, 457, 458, 460, 462 to 464, 466 to 468 and 269 dated 15.12.2001 to the petitioners as illegal, arbitrary and unconstitutional, without jurisdiction and against the provisions of Section 429 of the Hyderabad Municipal Corporation Act and consequently quash the said notices as null and void.

The learned counsel for the petitioners submits that they are all tenants and rent control proceedings are pending before the Principal Rent Controller, Secunderabad and in the meanwhile, the impugned notices have been issued under Section 459 of the Hyderabad Municipal Corporation Act on the ground that the houses are under dilapidated condition and directed the petitioners to vacate the premises in question within ten days.

The learned counsel for the petitioners further submits that the notices have been issued without any basis and without giving any show cause notice.

On the other hand, the learned Standing Counsel for the Municipal Corporation, Smt.Jyothi Kiran, submits that the Engineering Department of the Corporation has inspected the premises in question and have come to the conclusion that they are in dilapidated condition. The learned Standing Counsel further submits that the impugned notices may be treated as show cause notices and the petitioners may be given liberty to file their objections.

I see some force in the contentions advanced by the learned Standing Counsel for the Municipal Corporation. Accordingly, the petitioners are permitted to file their objections

within two weeks from the date of receipt of a copy of this order treating the notices dated 15.12.2001 as show cause notices and on filing such objections, the respondents are directed to pass appropriate orders within a period of four weeks thereafter. Till such time, status quo existing as on today shall be maintained.

With the above directions, the Writ Petition is disposed of at the admissions stage.

It is clear that this Court permitted the petitioners to file their objections treating the notice dated 15.12.2001 as a show cause notice and the Municipal Corporation was directed to pass appropriate orders within a period of four weeks thereafter. The petitioners submitted a common representation raising objections to notice dated 15.12.2001. The first respondent thereafter passed orders on 19.06.2002 requesting all the petitioners to vacate and remove the dilapidated houses bearing Nos.1-4-229 to 243/1 within three days. Aggrieved by the same, the petitioners preferred an appeal being M.A.No.61 of 2002 on the file of the Court of Chief Judge, City Small Causes Court, Hyderabad presumably under sub-section (6) of Section 654 of the Act. By order dated 24.03.2004, the learned Chief Judge, City Small Causes Court dismissed the appeal. Aggrieved by which, the present writ petition is filed.

The learned counsel for the petitioner Sri Vedula Venkata Ramana raised the following contentions.

1. The respondents did not consider the objections filed by the petitioners properly.

2. Though Section 459 of the Act contemplates enquiry, the respondents did not conduct any enquiry and did not permit the petitioners to adduce evidence.

3. The notice issued on 15.12.2001 is not in accordance with law, and

4. The order of the learned Chief Judge in M.A.No.61 of 2002 is illegal and perverse.

The learned Standing Counsel for Municipal Corporation of Hyderabad has placed before this Court the file containing the report of the Engineering Section, Municipal Corporation of Hyderabad, which is to the effect that the premises is a water stagnation point since long, that a big storm water drainage is passing nearby the premises, that some mud walls have already been collapsed and that the plinth level of the house is lower than the upper limit of storm water flow. Based on the report, the learned Standing Counsel would submit that when as a finding of fact, the Engineering Section has opined that the premises under occupation of the petitioners has to be demolished, this Court may not be inclined to interfere in exercise of power of judicial review.

After hearing the learned counsel for the petitioner and learned Standing Counsel for the respondents, this Court is not at all convinced that the petitioners have made out any cause for accepting the writ petition. The same is liable to be dismissed *in limini*, for the brief reasons infra.

First, the submission of the learned counsel for the petitioner that the objections filed by petitioner on 2.1.2002 have not been considered is without any basis. As noticed, pursuant to orders of this Court dated 26.12.2001 in W.P.No.26450 of 2001, petitioners submitted joint petition raising objections to notice dt.15.12.2001. The same was considered by first respondent before passing order on 19.6.2002 requesting the petitioners to remove the dilapidated structures. Dealing with this aspect in the order dt.19.6.2002 it is stated as under.

With reference to the subject cited, it is to inform you that the reply given by you on 02.01.2002 (as per orders passed by the Hon'ble High Court on 26.12.2001 in W.P.No.26450 of 2001) is not satisfactory and your request in the said representation to drop all further proceedings pursuant to the impugned notices u/S.456, dated 15.12.2001 is hereby rejected for the following reasons.

The submission that even though the petitioners asked to conduct enquiry into allegations, the same was denied which is contrary to provisions of Section 459 of the Act. It is not possible to accept the contention of the learned counsel for the petitioner that in every case where action is initiated under Section 456 of the Act, Commissioner should conduct enquiry after taking evidence. In this case action was initiated on a report submitted by Engineering Section. In the impugned order it is stated as under:

As already informed vide this office Lr.No.3034/TPS/W1/MCH/SD/ 2001, dated 15.12.2001 addressed to M/s.R.Madhusudhan Rao and J.Jeevan Babu, Advocates in reply to their legal notice dated 6.3.2001, that the premises under reference is in dilapidated condition and this premises is a water stagnation point since long and also that a big storm water drainage is passing nearby the premises and some mud walls have already collapsed and the plinth level of this house is lower than the upper limit of the storm water flow as per the opinion given by the Engineering Section, Secunderabad Division, MCH. The entire premises bearing number 1-4-229 to 243/1 situated at Kalasiguda is in dangerous and ruinous condition and likely to collapse causing danger to any person occupying the premises under reference and the surrounding neighbours and the public passing through the roads in front of this premises.

When it was found after conducting enquiry by Engineering Section that the structure of the house is not safe, it is always permissible for the Commissioner in exercise of power under Section 456 of the Act to order pulling down, remove or demolish the structures. It is necessary to extract Section 456 of the Act:

Removal of structures, trees etc., which are in ruins or likely to fall:- (1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall, parapet, pavement, floor, steps, railings, door or window frames or shutters or roof, or other structure and anything affixed to or projection from or resting on, any building, wall, parapet or other structure) is in ruinous condition or likely to fall, or is in any way dangerous to any person occupying, resorting to or passing by, such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to do one or more of the following things, namely;-

i. to pull down,

ii. to secure,

iii. to remove, or

iv. to repair such structure or thing, and to prevent all cause of danger therefrom.

(2) The Commissioner may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceedings to pull down, secure, remove or repair the structure or things, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail, if there be room enough for the same the Commissioner shall think the same desirable, to serve as footway for passengers outside of such hoard or fence.

(3) If it appears to the Commissioner that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Commissioner under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where the Commissioner is of opinion whether on receipt of an application or otherwise that the only or the most convenient means by which the owner or occupier of structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person the Commissioner after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing, authorize the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Commissioner shall be a sufficient authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section as little damage as possible shall be done to the adjoining owner's property, and the owner of occupier of premises for the benefit of which the work is done, shall-

i. cause the work to be executed with the least practicable delay;

ii. pay compensation to any person who sustains damage by the execution of the said work.

The intention of the Legislature is very clear. It is to prevent irretrievable damage to the life of the people in the neighbourhood. It must not be forgotten that Section 459 of the Act requires giving a reasonable opportunity of stating any objection and adducing evidence, if any. When the Engineering Department gave report to the effect that the building is in dilapidated condition and when the occupants of the building contend that building is habitable and structurally safe, in my opinion weight should be attached to the report of the Engineering Department. Be it noted a person who is in occupation of the building may compromise on the

safety of the building, but the Commissioner having regard to safety and life of the people in the neighbourhood cannot go by what the occupants feel or contend. Therefore, I reject the contention of the learned counsel. Thirdly, after perusing the impugned order dt.19.6.2002, this Court is convinced that respondents have considered all aspects of the matter in proper perspective.

Lastly, after perusing the impugned order in M.A.No.61 of 2002, I do not find any infirmity having regard to the report of the Executive Engineer, Zone-VII that some of mud walls have already collapsed. The learned Chief Judge upheld the orders of the Commissioner. Further, the report of the Engineering Section shows that the house where petitioners have their premises is in low-lying prone to inundation. This aspect of the matter has not been specifically denied. Therefore, I am convinced that the respondents have followed the procedure before passing order under Section 456 of the Act which has been rightly upheld by the appellate authority under Section 654(6) of the Act.

The dispute in this Writ Petition, to my mind, is essentially a dispute regarding facts as they exist, namely, the structural safety of the building. In a matter of this nature, in a petition for judicial review, it is always proper for the Court to accept the report of the expert persons like Engineering Department Officials than independently scrutinizing the facts. Even if the Court comes to a conclusion other than arrived at by the officials, but still the power of judicial review cannot be exercised for certain issues like structural safety and habitability of the building are not justiciable, and must be left to public authority assigned with duty to regulate building safety.

The writ petition is devoid of merits and is accordingly dismissed.

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(V.V.S.RAO,J)

27.07.2004.

pln/bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Commissioner, Municipal Corporation of Hyderabad, Hyderabad

2. 2 CCs to Ms.G.Jyothi Kiran, SC for MCH (OUT)

3.2CD copies

*Form-NIC-OGS/WP{**AVLR**}*

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